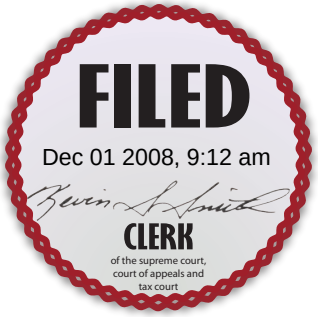

APPELLANT PRO SE:

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IN THE
COURT OF APPEALS OF INDIANA

LARRY F. ANGLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 43A05-0712-PC-733
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Michael D. Cook, Special Judge
Cause No. 43C01-0303-FA-19

DECEMBER 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Larry F. Anglin (Anglin) appeals the denial of his Amended Petition for Post Conviction Relief. We affirm.

In October 2003, a jury convicted Anglin of four counts of Class A felony child molesting and two counts of Class C felony child molesting for engaging in sexual acts with his eight and nine-year-old stepchildren. This court affirmed Anglin's conviction and sentence on direct appeal.

In November 2004, Anglin filed his first petition for post-conviction relief. He amended the petition in 2007, at which time he also filed a motion for change of judge. In the petition, Anglin apparently raised the issues of judicial bias and prosecutorial misconduct.[1] He also apparently claimed that he received ineffective assistance of counsel at trial and on appeal. At the post-conviction hearing, Anglin's only evidence was his testimony. He did not introduce the trial transcript into evidence. The post-conviction court denied Anglin's motion and petition, and Anglin appeals.

At the outset, we note that Anglin's *pro se* "Brief and Memorandum to Appeal . . ." wholly fails to comply with Indiana Appellate Rule 46. Specifically, the "Brief" does not contain a "Statement of Issues," a "Statement of Case," a "Summary of Argument," or an "Argument" section, all as required by Appellate Rule 46. Rather, under a heading denominated "Statement of The Facts on P. C." Anglin has compiled numerous pages of not factual material, but rather attempted arguments. Such is a clear violation of Appellate Rule 46(A). *See Montgomery v. Trisler*, 771 N.E.2d 1234 (Ind. Ct. App.

[1] Anglin did not include a copy of his amended petition for post-conviction relief in his Appendix.

2002), *trans. denied, cert. denied,* 538 U.S. 946 (2003). In addition, Anglin's purported arguments are unsupported except by bald and wholly conclusory assertions. *See Moore v. State*, 426 N.E.2d 86 (Ind. Ct. App. 1981). In fact, they are so overly broad as to "impede[] our appellate consideration of the [asserted] errors." *See Shepherd v. Truex*, 819 N.E.2d 457, (Ind. Ct. App. 2004). Such failure to comply with the applicable rule would, of itself, justify our affirmance of the judgment. *See Carnes v. State*, 480 N.E.2d 581 (Ind. Ct. App. 1985).

Nevertheless, we have endeavored to ascertain the essence of Anglin's asserted errors and to address such arguments as are appropriately before us. Anglin first claims that the post-conviction relief judge erroneously failed to recuse himself. Specifically, Anglin contends that the judge was prejudiced against Anglin in that he "elected to ignore several relevant issues that were raised by the Petitioner [,] . . . made findings that were not consistent with the evidence [,]. . . and literally accepted the State's Findings and [C]onclusions as they were presented by the State. . . ." Appellant's Br. at 3. However, as the court found in its order denying Anglin's petition for post-conviction relief, "[d]efendant has failed to provide any evidence of personal bias by Special Judge Cook against him." Appellant's App. at 2.[2] More to the point the court noted that the "procedural and evidentiary issues were vigorously litigated by the respective attorneys,

[2] As we previously noted, the record before us does not contain either the original Petition for Post-Conviction Relief or the Amended Petition. We are therefore unable to discern whether the nebulous, unspecific and generic allegations contained in Anglin's brief were in fact assertions made in the Amended Petition. We would note, however, that Anglins's Appellant's Case Summary filed December 10, 2007, asserts as the anticipated issues on appeal only "A Change of Judge-(Prejudice)---An unsigned warrant of arrest."

some resulting in rulings that were adverse to the Defendant's position." Appellant's App. at 2. The mere assertion that the court made various rulings adverse to Anglin does not demonstate prejudice against Anglin. *See Voss v. State*, 856 N.E.2d 1211 (Ind. 2006). Anglin has shown no reversible error in this regard.

Neither do we conclude that the findings made by the post-conviction court, even if adopted to a degree from proposed findings tendered by the State, entitle Anglin to a reversal based upon prejudice against him.[3] *See Atterholt v. Robinson*, 872 N.E.2d 633 (Ind. Ct. App. 2007). *But see Prowell v. State*, 741 N.E.2d 704 (Ind. 2001) (reversing a post-conviction relief denial in a capital case where findings and conclusions were "a virtually verbatim copy of the findings proposed by the State" involving findings made "out of context" and which were "significantly misleading" and therefore "clearly erroneous").

We now turn to the other allegations of error in Anglin's appellate presentation. Post-conviction proceedings are not "super appeals" through which convicted persons can raise issues they failed to raise at trial or on direct appeal. *Douglas v. State*, 800 N.E.2d 599, 604 (Ind. Ct. App. 2003), *trans. denied.* Rather, these proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. *Id.* Post-conviction proceedings are civil in nature, and petitioners bear the burden of proving their grounds for relief by a preponderance of the evidence.

[3] The record does not contain a copy of the findings and conclusions proffered by the State. It is therefore impossible for us to ascertain what if any of such tendered findings were adopted, even in part, by the court. No cause for reversal has been demonstrated.

Id.

When a petitioner appeals the denial of post-conviction relief, he appeals from a negative judgment. *Id.* Consequently, we may not reverse the post-conviction court's judgment unless the petitioner demonstrates that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *Id.*

Anglin first contends that the prosecutor engaged in several instances of prosecutorial misconduct. We note that the post-conviction court was extremely lenient in allowing Anglin to present his position from the witness stand but correctly concluded that such presentation was nothing more than unsupported repetition of the various allegations made. Anglin presented no evidence in support of his allegations.[4]

Anglin also argues that his videotaped confession was erroneously admitted. This issue was argued and decided adversely to him on direct appeal. That determination is res judicata with regard to the videotaped confession and also precludes a successful assertion that counsel was in any way ineffective with respect to that issue. *See Timberlake v. State*, 753 N.E.2d 591 (Ind. 2001), *cert. denied*, 537 U.S. 839 (2002); *Shanabarger v. State*, 846 N.E.2d 702 (Ind. Ct. App. 2006).

Anglin further claims that trial and appellate counsel were ineffective. A Sixth Amendment claim of ineffective assistance of counsel may be presented for the first time

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[4] One of Anglin's claims was that the prosecutor engaged in misconduct by subjecting him to double jeopardy. However, the post-conviction court correctly observed in its order denying Anglin relief that "[e]ach charge was distinct, with individual elements that the State was required to prove .... [and that] the record is absent of any evidence other than the Defendant's unsupported allegation that the Defendant was subject to double jeopardy." Order p. 3.

in a petition for post-conviction relief. *Godby v. State*, 809 N.E.2d 480, 483 (Ind. Ct. App. 2004), *trans. denied*. We review ineffective assistance of counsel claims under the two-prong test set forth in *Strickland v. Washington*, 466 U.S.668 (1984). *Douglas*, 800 N.E.2d at 607. First, the petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness and denied the petitioner the right to counsel guaranteed by the Sixth Amendment to the United State Constitution. *Id.* Second, the petitioner must demonstrate that he was prejudiced by his counsel's deficient performance. *Id.* To demonstrate prejudice, a petitioner must demonstrate a reasonable probability the result of his trial would have been different had counsel not made the errors. *Id.* A probability is reasonable if our confidence in the outcome has been undermined. *Id.*

Here, Anglin claims without evidentiary support that counsel did not investigate the case thoroughly, that his cross-examination of the State's witnesses was inadequate, that he failed to obtain Anglin's release for violation of Criminal Rule 4,[5] and that he should have withdrawn from the case.

The post-conviction court concluded from its examination of the record that trial counsel was extremely experienced in criminal trial matters and that he did investigate the case thoroughly. As to Anglin's Criminal Rule 4 contention, the post-conviction court concluded that much of the delay was attributable to various motions filed by

[5] Counsel testified at the post-conviction hearing and stated that he had in fact filed a Motion seeking Anglin's release for violation of Criminal Rule 4(A).

Anglin.[6] Again, Anglin's arguments as to ineffective trial counsel are wholly unsupported by evidence other than mere statements that Anglin was unsatisfied by his trial representation.

Anglin acknowledged this state of affairs during his post-conviction testimony. When discussing the matter of adequate cross-examination the court asked Anglin, "what questions do you think they should have been asked that he didn't ask?" Anglin responded as follows: "I really don't know at this time, sir." (Tr. 29). Somewhat in conclusion as to counsel's over-all representation, Anglin stated: "Well, I feel that he give (sic) me a sub-par performance. That's all I can tell you." (Tr 30).

With regard to trial counsel's failure to withdraw from representing Anglin, the court specifically noted that counsel had sought to withdraw and that the court appropriately held its ruling on such motion in abeyance unless and until substitute counsel had been retained and had filed an appearance. That eventuality never occurred. It was therefore permissible to allow the trial to proceed without new counsel. *See Gilliam v. State*, 650 N.E.2d 45 (Ind. Ct. App. 1995), *trans. denied*.

We hold that from the state of the record and the absence of evidence in support of the various allegations, Anglin has failed to demonstrate that his trial counsel's performance was deficient. Given our holding upon the issue of ineffective trial counsel, we necessarily conclude that appellate counsel could not properly be held inadequate for

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[6] The charges against Anglin were filed on March 6, 2003. The jury verdict following his trial was entered on September 17, 2003. Even if the trial commenced on the same day as the verdict was rendered, the six month period contemplated under Rule 4 (A) would have expired at the earliest on or about September 5. Virtually any delay attributable to Anglin himself or to justifiable court congestion, would have extended the six-month period beyond the first day of trial.

failing to raise unmeritorious allegations concerning trial counsel's representation.

We have fairly and fully attempted to address what we perceive to be the arguments sought to be presented. Anglin, however, has failed to demonstrate that the evidence as a whole leads unerringly and unmistakeably to a decision opposite that reached by the post-conviction court.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.